

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CLIFFORD BOYNES, et al.,)	
)	
Plaintiffs,)	Civil Action No. 2021-0253
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
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)	
HELEN SHIRLEY, et al.,)	
)	
Plaintiffs,)	Civil Action No. 2021-0259
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
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)	
FRANCIS E. CHARLES and THERESA J. CHARLES,)	
)	
Plaintiffs,)	Civil Action No. 2021-0260
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
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)	
BEECHER COTTON, et al.,)	
)	
Plaintiffs,)	Civil Action No. 2021-0261
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
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LIMETREE BAY TERMINALS, LLC, RESPONSE IN *PARTIAL* OPPOSITION TO PLAINTIFF’S MOTION TO PRESENT TESTIMONY OF DR. ERNO SAJO AND DR. STEPHEN KING VIA VIDEOCONFERENCING [ECF. No. 189]

COMES NOW Defendant LIMETREE BAY TERMINALS, LLC (d/b/a Ocean Point Terminals) (“Terminals”), by and through undersigned counsel, and hereby partially opposes Plaintiff’s motion to present testimony via videoconferencing [ECF No. 189].

Terminals *partially* opposes Plaintiffs motion because Terminals does not oppose Plaintiffs’ primary request that the Court allow two of their witnesses, Dr. Sajo and Dr. King, to testify via videoconference at the upcoming entitlement hearing. (*Id.* ¶¶ 1-7.). Instead, Terminals opposes Plaintiffs’ alternative request that the Court accept into evidence Dr. Saito and Dr. King’s declaration in lieu of their live testimony, should the Court deny their primary request. (*Id.* ¶ 8). Terminals never consented to this alternate relief.

Plaintiffs cite to *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 718-19 (3d Cir. 2004) to suggest the Court can accept affidavits in place of live testimony, whether in person or via videoconference; but Plaintiffs fail to acknowledge the simple fact that the *Kos Pharms.* court accepted affidavits because it did not hold an evidentiary hearing to decide the entitlement issue. Rather, the *Kos Pharms.* court based its findings only on the documentary record established by the parties’ moving papers. (*Id.* at 706. “Neither party requested an opportunity to adduce oral testimony on the application...[t]he documentary evidence before the district court included the following...”).

Unlike *Kos Pharms.*, this Court has set an evidentiary hearing where the facts will be developed through live testimony subject to cross-examination; not through one-sided and self-serving affidavits or declarations in place of live testimony. Therefore, while Terminals does not oppose Plaintiffs’ primary request to present live testimony via videoconferencing, Terminals

does request that the Court deny alternative request that the Court accept affidavits in place of live testimony.

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